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No. 920 54

In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH RUZICKA AND CHARLES RUZICKA, INDIVIDUALLY, AND AS CO-PARTNERS, TRADING AS SEELEY DAIRY

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above-entitled cause on October 30, 1945, reversing a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, granting an injunction directing compliance with, and permanently enjoining violations of, the provisions of Order No. 41, as amended, issued under the Agricultural Marketing Agreement Act of 1937, as amended, regulating the handling of milk in the Chicago, Illinois, Marketing Area (R. 121–123).

OPINION BELOW

No opinion was rendered by the District Court. The findings of fact and conclusions of law entered by the District Court appear in the record (R. 117–121). The opinion of the Circuit Court of Appeals (R. 135–141) is reported in 152 F. 2d 167.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 30, 1945, and a petition for rehearing was denied on January 5, 1946 (R. 144). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

QUESTION PRESENTED

Whether, in a proceeding under Section 8a (6) of the Agriculture Marketing Agreement Act of 1937 to enforce compliance with obligations imposed upon the defendants by a milk marketing order issued under Section 8c of the Act, the defendants, after having admitted non-compliance with the order, may challenge the legality of the obligations which it imposes before the administrative remedy specifically provided by Section 8c (15) for determining the legality of the order has been exhausted.

STATUTE AND ORDER INVOLVED

The statute involved is the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7

U. S. C. sec. 601, *et seq.*, which reenacted and amended the Agricultural Adjustment Act as amended (48 Stat. 31, 48 Stat. 670, 49 Stat. 750). The pertinent provisions are as follows:

> 8a (6). The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.
>
> 8a (8). The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.
>
> 8c (15) (A). Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connecton therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

8c (15) (B). The District Courts of the United States (including the district court of the United States for the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

The administrative regulation involved is Milk Order No. 41, as amended, issued under the act by the Secretary of Agriculture on June 27, 1941 (6 Fed. Reg. 3130) and set forth in full in the record (R. 43–65). The order fixes a use value uniform as to all handlers for each of four classes of milk (sec. 941.4 941.5, R. 49–58). Each handler is required to report to the market administrator the quantity of milk used in each class (sec. 941.3 (a), R. 48–49). The market administrator adds the reported use values of the milk of all the handlers, the location differentials, the cash balance in the producer-settlement fund, divides the resulting total by the quantity of milk reported handled, subtracts a reserve for errors in reports and payments, and announces the balance as the uniform price to be paid by handlers to producers (sec. 941.2 (e), R. 48; sec. 941.7, R. 59–60). Since the variance among handlers in the percentage of milk used in a given class will normally mean that the use values for a handler may be greater or less than payments at the uniform price required to be made by him to his producers, handlers for whom there is a plus difference are required to pay the difference into a producer-settlement fund, while a handler for whom there is a minus difference is entitled to be paid the difference from the fund in accordance with a transcript of account furnished by the market administrator

(sec. 941.8, R. 60–62). These payments, including those due as a result of adjustments in errors in payments, are provided for in the following paragraphs:

941.8 (d) Producer-settlement fund. The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (e) and (g) and out of which he shall make all payments to handlers pursuant to paragraphs (f) and (g) of this section: Provided, That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each delivery period, the market administrator shall compute the amount by which each handler's net pool obligation, including the payments to producers which are required to be made pursuant to Sec. 941.6, is greater or less than the sum obtained by multiplying such handler's net pooled milk by the uniform price and shall enter such amount on each handler's account as such handler's pool debit or pool credit, as the case may be, and render such handler a transcript of his account.

941.8 (e) Payments to the producer-settlement fund. On or before the 16th day after the end of each delivery period

each handler shall make full payment to the market administrator of any pool debit balance shown on the account rendered, pursuant to paragraph (d) of this section, for the preceding delivery period.

941.8 (f) Payments out of the producer-settlement fund. On or before the 17th day after the end of each delivery period, the market administrator shall pay to each handler the pool credit balance shown on the account rendered, pursuant to paragraph (d) of this section, if any, for the preceding delivery period, less any unpaid obligations of the handler. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler, who, on the 18th day after the end of each delivery period, has not received the balance of the payment due him from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his total payments uniformly to all producers by not more than the amount of the reduction in payment from the producer-settlement fund.

941.8 (g) Adjustments of errors in payments. Whenever verification by the market administrator of reports or pay-

ments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (d) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer, for milk purchased or received by such handler, discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

STATEMENT

On September 15, 1942, the United States, petitioner herein, filed its complaint in the District Court of the United States for the Northern District of Illinois, Eastern Division (R. 3–7), in which it sought to compel the respondents to comply with Order No. 41, as amended. An answer was filed on November 13, 1942 (R. 70–

73). A supplemental complaint[1] was filed on April 10, 1944 (R. 73–78), and an answer to the supplemental complaint was filed on May 8, 1944 (R. 89–95).

The material allegations of the supplemental complaint are as follows: Respondents, handlers of milk, have filed reports with the market administrator from which the market administrator has made computations and rendered respondents monthly a transcript of their account with the producer-settlement fund, all as required by Order No. 41, as amended (R. 75). In violation of Section 941.8 (e) (R. 61) of the Order (which requires each handler on or before the 16th day after the end of each delivery period to make full payment to the market administrator of any debit balance "shown on the account rendered"), respondents failed and refused with respect to delivery periods from April 1, 1942, to and including February 29, 1944, to make full payment of the amounts shown to be due, with the result that as of March 16, 1944, respondents were indebted to the market administrator on the basis

[1] The original complaint also included Frank Ruzicka, a co-partner, as a defendant and sought recovery of money due for delivery periods prior to April 1, 1942. It later appeared that Frank Ruzicka had entered the military service on April 1, 1942, and, upon the request of respondents, the district court entered an order on June 25, 1943, withdrawing the case based upon the original complaint from the trial call of the court until the release of Frank Ruzicka from military service (R. 73–74). The supplemental complaint sets forth claims arising since April 1, 1942.

of their filed reports in the sum of $961.27 (R. 75). The supplemental complaint further alleges that, in accordance with the requirements of the order, the market administrator audited the reports and records of respondents, found deficiencies in payments to the producer-settlement fund for the delivery periods commencing April 1, 1942, and ending August 31, 1943, in the sum of $2,119.17, and billed respondents for this amount (R. 75–76). In violation of Section 941.8 (g) (R. 61–62) (which requires the handler to pay within 5 days "the amount so billed") respondents failed and refused to pay the billed amount (R. 76).[2]

Respondents answers did not deny the filing of the alleged reports with the market administrator, the receipt of the monthly transcript of their account with the producer settlement fund based upon the reports filed, the receipt of a bill for shortages disclosed by the audit of the market administrator, or the non-payment of the debit

[2] The supplemental complaint also alleged and the district court found that respondents were indebted to the market administrator for their pro rata share of the expenses of administration and for marketing services (R. 76, 119–120). Respondents' answer denied these claims (R. 92). However, after the decision of the Circuit Court of Appeals reversing the judgment of the district court, respondents paid the claimed amounts to the market administrator. Consequently, no further reference will be made to the amounts claimed for administrative expenses and marketing services.

balance shown on the account rendered or the bill for shortages disclosed by the audit (R. 70, 89, 91). However, respondents alleged that any billing by the market administrator, if properly made and applicable to respondents, was based upon an erroneous, improper, incomplete and inaccurate inspection or audit of respondents' reports, books and records and upon findings gathered from and based upon erroneous, improper, incomplete and inaccurate tests of respondents' milk and milk products (R. 91).

Respondents' answer also affirmatively alleged: (1) the invalidity of the issuance of the order because promulgated upon insufficient and inaccurate economic facts (R. 92–93); (2) the invalidity of the continued existence of the order because of its failure to effectuate the declared policy of Congress and its conflict with the declared policy of other acts and orders promulgated thereunder (R. 93–94); and (3) the absence of an affirmative determination by the Secretary of Agriculture of the applicability of the act and order involved to respondents (R. 94).

Respondents, after answering, petitioned the trial court to stay further proceedings until the final administrative determination of the matters in controversy between the petitioner and respondents in a proceeding under Section 8c (15) (A) of the Act then pending before the Secretary

of Agriculture.[3] The petition stated that the administrative proceedings would "afford a full and complete hearing as to the amount of monies, if any, due to the funds administered by the Market Administrator" (R. 95–97). Several months later petitioner moved for judgment on the pleadings (R. 98). At the hearing on this motion respondents requested and were granted leave to withdraw the petition to stay the proceedings (R. 108). At the same hearing respondents petitioned for rules on the petitioner (1) to file a reply to the affirmative defenses in the answer; (2) for a bill of particulars as to the amount of money claimed and the basis of the claim; (3) to strike the motion for judgment on the pleadings; and (4) to have the case set for a

[3] Respondents filed petitions under Section 8c (15) (A), for administrative relief both during the pendency of the action and after the entry of judgment in the district court. The first petition was filed November 2, 1943, and was superseded by a petition filed May 3, 1944, which in turn was superseded by an amended petition filed August 9, 1944. At the hearing on this petition respondents requested a continuance to await the outcome of the enforcement proceedings. The petition was dismissed on December 12 with leave to file another petition within 30 days (3 Agr. Dec. 1049). A new petition was filed on January 13, 1945. Motions filed by defendant in connection with this hearing were denied on May 18, 1945. At the hearing on this petition on May 29, 1945, respondents moved to continue the hearing to await the outcome of the present case and, upon denial of this motion, respondents' motion to withdraw the petition was granted without prejudice (4 Agr. Dec. 825).

hearing before a jury (R. 99–106). These motions were denied (R. 116–117).

The trial court granted petitioners' motion for judgment on the pleadings (R. 115). It held that the only issue was whether the respondents had failed to discharge their obligations under the order and this issue was decided in favor of the petitioner by the admissions in the answer (R. 117–118). The final judgment of the district court, entered October 20, 1944, required the respondents to pay to the market administrator the sums claimed in the supplemental complaint and such additional sums as are found to be due for subsequent delivery periods down to the date of the entry of judgment and also restrained respondents from further violations of the order. The court retained jurisdiction to await the outcome of the then pending administrative proceedings.

Respondents appealed to the Circuit Court of Appeals for the Seventh Circuit, which entered an order on October 30, 1945, reversing the judgment of the district court and remanding the case for further proceedings in accordance with the views expressed in the opinion (R. 142). The majority opinion held that the trial court erred in holding that respondents were not entitled to challenge the legality of the obligations imposed by the order in a compliance proceeding (R. 135–141). Judge Kerner, dissenting from

this holding, was of the opinion that Section 8c (15) provided the exclusive procedure for determining the legality of an obligation imposed under the order (R. 141). A petition for rehearing was filed on November 13, 1945, and was denied on January 5, 1946 (R. 144).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that in an enforcement action under Section 8a (6) of the Act, the district court could not, upon a showing of non-compliance, require the respondents to discharge their obligations under the Order pending exhaustion of their administrative remedy under Section 8c (15) of the Act for a modification of such obligations.

2. In holding that where the market administrator bills a handler for sums due based on filed reports, the handler is entitled to a trial on all fact issues in an enforcement action.

3. In holding that the district court was in error in refusing to permit the respondents to present evidence to show alleged error in the billings of the market administrator by reason of an inaccurate inspection or audit of respondents' records and findings based upon improper, incomplete, and inaccurate tests of respondents' milk and milk products.

4. In failing to hold that the administrative proceeding by a handler under Section 8c (15)

of the Act is the sole remedy to settle disputes with respect to the legality of obligations imposed on the handler under a milk order.

5. In failing to hold that Section 8a (6) of the Act, in the light of the mandate expressed in Section 8c (15) thereof, authorizes the district court to direct compliance by a handler pending a determination of factual issues by the Secretary of Agriculture in the administrative proceeding established by the Act.

6. In ruling that Section 8a (8) of the Act tends to substantiate a belief that Congress did not mean to make the administrative remedy exclusive.

7. In holding that the word "may" in Section 8c (15) of the Act indicates congressional intent that the administrative remedy is permissive rather than exclusive.

8. In reversing the judgment of the district court.

REASONS FOR GRANTING THE WRIT

1. The holding of the court below is in conflict with the only other decision of an appellate court on the question. In *La Verne Co-op. Citrus Ass'n* v. *United States*, 143 F. 2d 415, the Circuit Court of Appeals for the Ninth Circuit held that the constitutionality of a lemon limitation order, also issued pursuant to Section 8c of the Agricultural Marketing Agreement Act of 1937, which appears valid on its face, cannot be challenged

in an enforcement proceeding under Section 8a (6) when the administrative remedy provided by Section 8c (15) has not been exhausted. In reaching this conclusion, the court stated that the procedure provided by the latter section "for determining the validity of orders is exclusive" (p. 418). This decision is indistinguishable in principle from the present case, and the court below expressly stated (R. 141) that it had reached "a contrary conclusion to that announced in the *La Verne* case."[4] In cases arising under milk orders, the district courts have uniformly reached the same conclusion as that of the Ninth Circuit in the *La Verne* case with respect to suits to enforce the collection of monetary obligations due a market administrator. *United States* v. *Hogansburg Milk Co., Inc.*, 57 F. Supp. 297 (N. D. N. Y.); *United States* v. *Ridgeland Creamery Co.*, 47 F. Supp. 145 (W. D. Wis.); *United States* v. *Burlington Sanitary Milk Co., Inc.*, decided October 16, 1944 (E. D. Wis., unreported).

2. The Government submits that the decision of the court below misconstrues the purpose of Congress to make the administrative proceedings authorized by Section 8c (15) (A) the sole forum for determining the legality of obligations imposed by marketing orders issued under Section

[4] In the *La Verne* case an administrative proceeding brought by the defendant was still pending. In this case respondents had filed, but subsequently withdrawn, a petition for administrative relief. See p. 12, note 3, *supra*.

8c of the Act. The relevant statutory provisions are: The several district courts are given jurisdiction to enforce, and to restrain any person from violating, any order or regulation issued under the Act (Sec. 8a (6)). Any handler subject to an order issued under the Act is authorized to petition the Secretary of Agriculture to determine, after hearing, the legality of any such order, any provision of any such order, "or any obligation imposed in connection therewith". The determination of the Secretary shall be final if in accordance with law (Sec. 8c (15) (A)). The several district courts are authorized to review the determination of the Secretary to determine if it is in accordance with law (Sec. 8c (15) (B)). The handler is immune from criminal penalties for violations of the challenged provisions of the order during the proceedings before the Secretary (Sec. 8c (14)). However, the pendency of administrative or judicial proceedings under Section 8c (15) "shall not impede, hinder, or delay" the government "from obtaining relief pursuant to section 8a (6)." But any action under Section 8a (6) "shall abate whenever a final decree has been rendered" in the proceeding under Section 8c (15) (Sec. 8c (15) (B)).

The statute clearly contemplated that an order for the payment of assessments be administratively reviewed. The Act provides for review

not only of the "order" and its "provisions" but of "any obligation imposed in connection therewith". The marketing order here expressly required payment of the amounts "shown on the account rendered" (Section 941.8 (e)) and the amounts "billed" (Section 941.8 (g)) each month. Failure to make the payments is a breach of an obligation imposed by the order. Thus the clause in Section 8c (15) (A) with respect to "any obligation" clearly includes obligations to pay assessments into producer settlement funds. Indeed it cannot be doubted that this familiar type of obligation[8] was precisely what Congress intended by the use of the phrase.

The creation of a special administrative forum to determine the legality of marketing orders of the Secretary of Agriculture and of the obligations imposed by such orders and the various aspects of finality attaching to its determinations strongly impel the conclusion that it was given exclusive primary jurisdiction of the matters within its competence. This conclusion is supported by the nature of the questions involved in such determinations. The Act deals with problems the complexity of which have been recognized by this Court. *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533; *United States* v.

[8] See *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 552–553n, 555; *H. P. Hood & Sons* v. *United States*, 307 U. S. 588, 594.

Wrightwood Dairy Co., 315 U. S. 110. The provisions of the Act governing milk marketing orders (7 U. S. C. 608c (5)) and the provisions of the order now before the Court (which is representative of the many other outstanding milk orders) show the complex and technical nature of the questions to which they give rise.

This is true as to the type of determination involved in this case, which does not present merely a mathematical or accounting problem. On the contrary, as is suggested by respondent's answer (R. 72), the issues relate to the accuracy and completeness of "tests of the defendants' milk and milk products" and as to whether "certain quantities of milk and milk products were not properly or correctly allocated, distributed or divided by the market administrator or his representatives into the classes of milk and milk products set forth in the orders and amendments alleged." Such questions of classification are obviously matters which should properly first be submitted to an agency possessing special competence in the field.[6]

[6] For examples of cases in which problems of the sort involved here have been considered on petitions for administrative relief, see *In the Matter of the Petitions of Grandview Dairy, Inc., and Arkport Dairies*, 1 Agr. Dec. 133; *In the Matter of the Petition of Harold W. Holden, et al.*, 1 Agr. Dec. 524; *In the Matter of the Petition of Ogden Dairy Co.*, 2 Agr. Dec. 558; *In the Matter of the Petition of C. J. Wieland & Sons Dairy Products Co.*, 2 Agr. Dec. 647; *In the Matter of the Petition of Dellwood Dairy Co.*, 3 Agr. Dec. 1053.

This conclusion finds further support in the fact that enforcement proceedings under Section 8a (6) may be instituted and prosecuted pending final termination of the proceedings under Section 8c (15). Even apart from the burden which it would place on the district courts, it is not reasonable to suppose that Congress, having created a forum possessing special competence, would authorize district courts concurrently to determine the very question delegated to the specialized forum. It is also not reasonable to suppose that Congress intended to create a situation where the same district court or different district courts would be simultaneously considering the same question, originally in one case, and on review in another case. The conclusion seems inescapable that Congress intended the district courts to have power to consider the validity of marketing orders only when reviewing determinations made by the Secretary in proceedings under Section 8c (15) (A).

The decision of the court below is also erroneous because it disregards the "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted" *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50–51. While the rule was applied to a plaintiff in that case, the controlling considerations appear identical irrespec-

tive of whether applied to a plaintiff or a defendant. Cf. *Bradley* v. *Richmond*, 227 U. S. 477, 485–486. It is settled that there are no constitutional objections to the application of the doctrine to a defendant. *Bowles* v. *Willingham*, 321 U. S. 503; *Yakus* v. *United States*, 321 U. S. 414; *Falbo* v. *United States*, 320 U. S. 549. And its application to the respondents will not result in irreparable injury since the market administrator is required to maintain a reserve to provide against the contingencies of errors in report or payments (Sec. 941.7 (b); R. 60).

3. The question presented is of major importance in the administration and enforcement of the Act. The Secretary of Agriculture believes that the successful operation of the Chicago and other milk orders is due in major part, to the fact that the courts, in enforcement proceedings, have refused to pass upon the validity of obligations imposed upon handlers by the milk orders. This is so for two reasons: First, questions which may be involved in determining the legality of the obligations imposed by these orders are so complex and technical that their correct, uniform and prompt decision requires the informed judgment of a specialized forum. Second, in accordance with the provisions of the Act, each milk order creates a producer-settlement fund, commonly referred to as an equalization pool, which is extremely sensitive to any disturbance in its

operation.[7] Failure of even a single handler to make the required payments into the pool causes an immediate breach in the equalization of costs to handlers and a reduction in the price to producers.[8] As a practical matter, therefore, the successful operation of the equalization pool is directly dependent upon prompt compliance by all handlers with requirements of the order. The effect of the decision of the court below is to nullify a carefully devised statutory procedure designed to secure these important advantages. Clearly, if handlers are permitted in an enforcement proceeding to raise all questions cognizable by the Secretary in a proceeding under Section 8c (15) there will be no incentive to utilize the administrative procedure to determine issues which in the present advanced stage of the program are primarily factual rather than constitutional.[9]

The effect of the decision below is also to create confusion and uncertainty in the enforcement of the Act. There are at least 47 orders issued under the Act in effect in various marketing areas

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[7] The operation of these equalization pools is described in *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 571.

[8] For the method of computing the uniform price payable to producers, see *supra*, p. 5.

[9] The constitutionality of the act has been sustained. *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533; *H. P. Hood & Sons* v. *United States*, 307 U. S. 588.

throughout the United States. Only two circuit courts of appeals have passed upon the question of whether the district courts in an enforcement action must determine the validity of an order or obligation under an order. Because of their conflicting decisions, there will be uncertainty and confusion in the district courts in other circuits and as to what action is advisable by the Government with reference to instituting enforcement proceedings.

We believe that the importance of the problem in the administration and enforcement of the Act and of orders issued thereunder merits review by this Court. *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 413; *Wallace Corporation* v. *National Labor Relations Board*, 323 U. S. 248, 251; *Stark* v. *Wickard*, 321 U. S. 288, 289.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

J. HOWARD MCGRATH,
Solicitor General.

MARCH 1946.

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